IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1408 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHULABHAI DAHYABHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1408 of 2003

MR DHIRENDRA MEHTA for Petitioners.

Mr. KD Pandya, AGP for Respondents.

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 28/06/2004

ORAL JUDGEMENT

What is challenged in the present Special Civil Application under Article 227 of the Constitution of India is the order passed by the Gujarat Revenue Tribunal dated 19th March 2002 in Review Application No. TEN.C.S.3/92 as well as judgment and order passed by the Gujarat Revenue Tribunal dated 2.12.1991 in Revision Application No. TEN.B.S.540/87 arising out of the

provisions of the Gujarat Agricultural Lands Ceiling Act, 1960 (hereinafter referred to as "the Act").

2. At the outset, it is very unfortunate to state that the proceedings which are commenced in the year 1976 are yet not finalised and the purpose for which the Act was enacted has not been achieved till date.

3. The petitioner No.1 filled in form/declaration as required under the provisions of the Act. The Mamlatdar and ALT, Kamrej processed the said form for computation of holding of land of the owner and by order dated 30th September 1981 in Ceiling Case No. 1618/1980 declared certain land as excess surplus land. Being aggrieved and dissatisfied with the order passed by the Mamlatdar and ALT dated 30th September 1981, appeal came to be preferred before the Deputy Collector, Olpad Division, Surat being Ceiling Appeal No. 88/1982 and by order dated 26.7.1982 the Deputy Collector, Olpad Division, Surat remanded the matter to the Mamlatdar & ALT. On remand the Additional Mamlatdar and ALT, Kamrej in Ceiling Case No. 194/1982 passed an order on 20th May 1987 declaring 17.12 gunthas of land as surplus land in excess of the ceiling limit. Being aggrieved and dissatisfied with the order passed by the Additional Mamlatdar & ALT (Ceiling), Kamrej, dated 20th May 1987 passed in Ceiling Case No. 194/1982, an appeal being Ceiling Appeal No. 83/1987 came to be filed before the Deputy Collector, Olpad Division, Surat, who dismissed the said appeal and confirmed the order passed by the Mamlatdar & ALT, Kamrej, declaring 17.12 gunthas of land as excess of the ceiling limit. Being aggrieved and dissatisfied with the judgment and order passed by the Deputy Collector, Olpad Pranth, Surat dated 30th November 1987 passed in Ceiling Appeal No. 83/1987 a revision application came to be filed being TEN.B.S.540/87 before the Gujarat Revenue Tribunal. The Gujarat Revenue Tribunal by its judgment and order dated 2.12.1991 partly allowed the said revision application modifying the order passed by both the authorities below and declared 10 acres and 23 gunthas of land as excess vacant land instead of 16 acres and 23 gunthas of land and remanded the matter to the Mamlatdar and ALT to give a right of selection to the landholder as to which 10 acres and 23.5 gunthas of land they want to surrender. It seems that the petitioners still not satisfied preferred a review application before the Gujarat Revenue Tribunal being Review Application No. 3 of 1992 and the Gujarat Revenue Tribunal by its order dated 19th March 2002 partly allowed the review application by holding that the petitioners No. 2 to 4 who were minors as on the

specified date and whose names were appearing as joint-holders of the suit land in Village Form No. 8A along with the name of petitioner No.1 are entitled to individual notices as contemplated in sub-section (2) of Section 20 of the Act and the Mamlatdar and ALT was directed to issue notices on the interested persons including the petitioners No. 2 to 4 herein as required under Section 20(2) of the Act and pass appropriate orders under Section 21(1) of the Act. Being aggrieved and dissatisfied with the order passed by the Gujarat Revenue Tribunal dated 19th March 2002 in Review Application No. TEN.C.S.3/92 as well as the judgment and order dated 2.12.1991 passed by the Gujarat Review Tribunal in Revision Application No. TEN B.A. 540/87, the petitioners have preferred the present Special Civil Application under Article 227 of the Constitution of India.

4. Shri Dhirendra Mehta, learned advocate appearing on behalf of the petitioners has submitted that the Gujarat Revenue Tribunal has not properly exercised revisional jurisdiction as well as review jurisdiction. It has been further argued that the Tribunal while remanding the matter to the Mamlatdar and ALT ought to have held that the minors are entitled to opportunity of being heard on all the issues available to them while holding that the minors are required to be issued notices under Section 20(2) of the Act. He has also further argued that the Tribunal has wrongly relied upon the Canal Certificate as the Canal Certificate which is relied upon by the Tribunal is not issued in consonance with the provisions of Section 2(6) of the Act. Relying upon the judgment of this Court in the case of Kashiben Vs. State of Gujarat, reported in 12 GLR Page 540, Shri Mehta has argued that sons of Bhulabhai were the interested persons and were required to be served with the notices under Section 20(2) of the Act and therefore it is argued that the entire proceeding is vitiated in absence of service of notice under Section 20(2) of the Act to the sons of Bhulabhai.

5. In response to the notice issued by this Court, Mr. KD Pandya, learned Assistant Government Pleader has appeared on behalf of the respondents and an affidavit-in-reply has been filed opposing the petition. It is submitted on behalf of the respondents that the certificate issued by the Canal Officers upon which reliance has been placed are valid and legal and they were issued after completing investigation of irrigation work. He has also further submitted that a detailed and reasoned order has been passed by the Gujarat Revenue

Tribunal and while disposing of the revision application all the points were considered which could not have been the subject matter of review application as under Section 17 of the Act of 1957 only the error apparent on the face of record would have been rectified and/or reviewed by the Tribunals.

6. Heard the learned advocates appearing for the parties. By judgment and order dated 2.12.1991 the Gujarat Revenue Tribunal has partly allowed the revision application and modified the order passed by both the authorities declaring 10 acres and 23.5 gunthas of land as surplus land instead of 16 acres and 23.5 gunthas of land as surplus land. The Gujarat Revenue Tribunal and all the authorities have relied upon the certificate issued by the Canal Officer. As rightly held by the Tribunal, the question with regard to non-issuance of notices under Section 20(2) has not been raised at the time of revision application which was decided in December 1991. Still, the Tribunal has considered the judgment of this Court in the case of Kashiben vs. State of Gujarat (Supra), and considering the same in the review application while partly allowing the review application the Tribunal has in fact directed the Mamlatdar and ALT to issue individual notices as contemplated in sub-section (2) of Section 20 of the Act. Considering the question with regard to lands and the Canal Certificates, the Tribunal has considered the same elaborately while deciding the revision application, and therefore there was no question of considering the same question again in the review application. There was no error apparent on the face of record and the same was on merits of the case. On overall consideration of the facts and circumstances of the case, it cannot be said that the judgment and order passed by the Gujarat Revenue Tribunal in Review Application as well as in Revision Applications are without any jurisdiction nor is there any error apparent on the face of it which calls for interference of this Court exercising the power under Article 227 of the Constitution of India. There is no error apparent much less an error of law which is required to be rectified by this Court in exercise of powers under Article 227 of the Constitution of India.

7. Under the circumstances, there is no substance in the present Special Civil Application and the same is dismissed. In view of the fact that the proceedings are very old and they were initiated as far back as in 1976, the Mamlatdar and ALT, Kamrej is directed to complete the proceedings as per the judgment and order passed by the Gujarat Revenue Tribunal dated 19th March 2002 passed in

Review Application No. TEN.C.S. 3/92 as early as possible, preferably within a period of three months from

the date of receipt of this order. Ad-interim relief granted earlier stands vacated forthwith. Notice is discharged.

[M.R. Shah, J.]

rmr.